

(1983) 01 AHC CK 0016
In the Allahabad High Court
Case No : First Appeal No. 209 of 1977

Ram Prasad Gupta

APPELLANT

Vs

Firm Seth Murlidhar Ram Chandra Vijai and Others

RESPONDENT

Date of Decision : 27-01-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2, Order 13 Rule 5, Order 7 Rule 17
Evidence Act, 1872 — Section 34
Negotiable Instruments Act, 1881 (NI) — Section 4
Uttar Pradesh Regulation of Money Lending Act, 1976 — Section 18, 26(4)
Uttar Pradesh Regulation of Money Lending Rules, 1976 — Rule 19
Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2, Order 13 Rule 5, Order 7 Rule 17
Evidence Act, 1872 — Section 34
Negotiable Instruments Act, 1881 (NI) — Section 4
Uttar Pradesh Regulation of Money Lending Act, 1976 — Section 18, 26(4)
Uttar Pradesh Regulation of Money Lending Rules, 1976 — Rule 19
Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2, Order 13 Rule 5, Order 7 Rule 17
Evidence Act, 1872 — Section 34
Negotiable Instruments Act, 1881 (NI) — Section 4
Uttar Pradesh Regulation of Money Lending Act, 1976 — Section 18, 26(4)
Uttar Pradesh Regulation of Money Lending Rules, 1976 — Rule 19

Citation : (1983) 01 AHC CK 0016

Hon'ble Judges : O.P. Saxena, J;K.C. Agarwal, J

Bench : Division Bench

Advocate : K.C. Saxena and V.K. Burman, for the Appellant; G. Nath and B.N. Misra, for the Respondent

Judgement

O.P. Saxena, J.—This is an appeal against the judgment and decree dated 16th May, 1977 passed by the Civil Judge, Etah dismissing a suit for recovery of Rs. 22,280.50 with pendentelite and future interest and costs.

2. The undisputed facts are that the parties are residents of Ganjdundwara, District Etah. The Plaintiff is a lecturer in Ganjdundwara Degree College. Defendants 2 to 5 Om Prakash Vijai, Babu Ram Vijai, Sita Ram Vijai and Jagdish Prasad Vijai are partners of Defendant No. 1 Firm M/s. Seth Murlidhar Ram

Chandra Vijai. Defendant No. 2 Om Prakash Vijai is the son of Defendant No. 3 Babu Ram Vijai. Defendant No. 3 Babu Ram Vijai is the Vice President of the Managing Committee of Ganjdundwara Degree College in which the Plaintiff is employed as a lecturer. On 3-9-70 a sum of Rs. 14,000/- and on 17-9-70 a sum of Rs. 1,000/- was paid by the Plaintiff to the Defendants.

3. Plaintiff filed the suit for recovery of Rs. 22,280.50 with pendentelite and future interest and costs with the allegations that on 3-9-70 Defendants borrowed Rs. 14,000/- from him and agreed to pay interest at the rate of Rs. 1.50 per hundred per mensem, that Defendant No. 2 Om Prakash Vijai also gave a writing in this connection, that on 17-9-70 the Defendants again borrowed Rs. 1,000/- from the Plaintiff, that Defendant No. 2 acknowledged the receipt of the amount on the earlier writing, that a sum of Rs. 15,000/- was due on the Defendants as the principal amount and a sum of Rs. 7,280.50 was due as interest upto the date of suit and that the Defendants have failed to pay the amount inspite of demand made by a notice sent by registered post.

4. The suit was contested by the Defendants with the allegations that they did not borrow any money from the Plaintiff, that the Plaintiff deposited Rs. 14,000/- with the Defendants on 8-9-70 and Rs. 1,000/- on 17-9-70, that the Plaintiff assured the Defendants that it was white money, that the Defendants called upon the Plaintiff to furnish proof of the money being white, that the Defendants told the Plaintiff that they would keep the money in deposit only on being satisfied that it was white money, that the Plaintiff failed to furnish satisfactory proof of this, that on 29-9-1970 the Defendants returned Rs. 15,000/- to the Plaintiff, that Defendant No. 2 Babu Ram Vijai was not present at the time the money was returned, that it was for this reason that the parcha was not demanded back, that on coming to know that the Plaintiff had obtained the parcha from Defendant No. 2, the Defendants asked them to return the parcha but the Plaintiff put off the matter on the pretext that it was not available, that the Plaintiff is not entitled to interest and that the Plaintiff has filed the suit with false allegations.

5. The written statement was amended and a plea was taken that the Plaintiff was a money-lender, that he did not obtain any registration under the U.P. Regulation of Money Lending Act, 1976, that he also did not furnish any statement of loan and that the suit is barred by Sections 18 and 26(4) of the Act.

6. The Plaintiff filed a rejoinder in which it was said that that he had complied with the provisions of law and the suit is not barrred by Sections 18 and 26(4) of the U.P. Regulation of Money Lending Act.

7. PW 1 Ram Prasad Gupta Plaintiff examined himself in support of his version. He also placed reliance on the writing (Paper No. 75 Kha) and copy of particulars of loans submitted by the Plaintiff in Form No. 10 Rule 19 of the rules framed under the U.P. Regulation of Money Lending Act.

8. DW 1 Babu Ram Vijai was examined in support of the Defendants' version.

Reliance was placed on the extracts of the Rokar and the Khata.

9. The learned Civil Judge considered the evidence on the record and held that the writing obtained by the Plaintiff from Defendant No. 2 is inadmissible evidence as it was not duly stamped, that copies of account books filed by the Defendants have been duly proved and are admissible in evidence, that Plaintiff's version regarding loan is not correct, that the Plaintiff had in fact deposited the money with the Defendants, that Defendants returned the amount to the Plaintiff and that the suit is barred u/s 26(4) of U.P. Act No. 29 of 1976. With these findings he dismissed the suit with costs and hence this appeal.

10. The first point urged by the learned Counsel for the Appellant is that the learned Civil Judge erred in holding that the writing given by Defendant No. 2 Om Prakash Vijai is inadmissible evidence as it was unstamped.

11. The writing (Paper No. 75 Kha) has been put down on the pad of M/s. Seth Murlidhar Ram Chandra Vijai Vergiya. It is dated 8-9-70. The contents are as below-

Sri. Ram Prasad Gupta, Parvakta Ganjdundwara, Kalla, Ganjdundwara.

Rs. 14,000/- (Rupees fourteen thousand) apke jama ham: Byaj 1/50 sai denge.

Sd. Om Prakash Vijai 8-9-70.

There is a further note:

Rs. 1000/- (Rupees one thousand) 17/9 ko aur jama honge ab kul 15,000/- (Rupees fifteen thousand) hogaye) Sd. Om Prakash Vijai.

12. A Promissory Note as defined in Section 4 of the Negotiable Instruments Act means an instrument in writing (not being a Bank-note or a currency note) containing an unconditional undertaking signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

13. There is substance in the contention of the learned Counsel for the Appellant that the writing referred to above was merely a Yad-dasht and did not come within the definition of a Promissory Note as given in Section 4 of the Negotiable Instruments Act as it does not contain an unconditional undertaking signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. There is no undertaking by Om Prakash Vijai to pay the sum of Rs. 14,000/- or Rs. 15,000/- to the Plaintiff. The undertaking, if any, is only regarding an unascertained sum of money in the form of interest. In the circumstances the learned Civil Judge erred in holding that the writing amounted to a Promissory Note and was inadmissible evidence on account of being unstamped. The writing was merely a Yad-dasht and did not require any stamp.

14. The 2nd point urged by the learned Counsel for the Appellant is that the

learned Civil Judge erred in holding that the copies of the account books filed by the Defendants are admissible in evidence.

Order 13, Rule 5 CPC provides as below:

Endorsements on copies of admitted entries in books, accounts and records-

(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (18 of 1891) where a document admitted in evidence in the suit is an entry in a letter-book or shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished-

(a) where the record, book or account is produced on behalf of party, then by that party, or

(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall after causing the copy to be examined, compared and certified in manner mentioned in Rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

Order VII, Rule 17 CPC provides as below:

Production of shop-book-(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (18 of 1891), where the document on which the Plaintiff sues is an entry in a shop-book or other account in his possession or power, the Plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which it relies.

(2) Original entry to be marked and returned.-The Court or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification, and, after examining and comparing the copy with the original, shall if it is found correct, certify it to be so and return the book to the Plaintiff and cause the copy to be filed.

15. The Defendants did not produce the original account books before the Court and did not get the copies (Papers Nos. 39 Ga/1 to 43 Ga/1) examined, compared and certified in the manner provided for in Rule 17 of Order VII Code of Civil Procedure.

16. The learned Civil Judge referred to a case reported in Paras Nath v. Kishan Lal 1964 ALJ 738. He has also quoted the relevant portion from the said ruling. It has been emphasised in the said case also that the copy has to be examined,

compared and certified with the original entry.

17. Section 34 of the Evidence Act only makes entry in the books of account regularly kept in the course of business relevant whenever they refer to a matter in which the Court has to enquire.

18. The entries made in the account books of the Defendants said to have been maintained in due course of business could have been relevant in this case if the same had been proved in accordance with the provisions of the Code of Civil Procedure. The Defendants did not comply with the provisions of Order 13, Rule 5 CPC and Order 7, Rule 17 CPC and did not get the copies examined, compared and certified from the original. They did not get the original entries also marked. In view of the non-compliance of the procedure prescribed by law the entries of the account books could not be admissible in evidence. The learned Civil Judge considered the production of the account-books at the time of the trial sufficient compliance of the aforesaid provisions. The finding recorded by him is grossly erroneous and is in contravention of the requirement of law. The entries in the account-books of the Defendants' firm could not be admissible in evidence except when the same were duly examined, compared and certified as provided in Order 13, Rule 5 and Order 7, Rule 17 Code of Civil Procedure. We, therefore, hold that the finding of the learned Civil Judge regarding the admissibility in evidence of the entries in the account books of the Defendants' firm is wholly illegal and erroneous.

19. The 3rd point urged by the learned Counsel for the Appellant is that the learned Civil Judge erred in holding that the Plaintiff gave the sum of Rs. 15,000/- to the Defendants by way of deposit and the money was not borrowed by the Defendants.

20. The statement of PW 1 Ram Prasad Gupta, Plaintiff shows that on 8-9-70 the Defendants through Defendant No. 2 Om Prakash Vijai borrowed a sum of Rs. 14,000/- and agreed to pay interest at the rate of Rs. 1.50 per hundred per mensem, that on 17-9-70 they further borrowed a sum of Rs. 1,000/- on the same terms, that Defendant No. 2 Om Prakash Vijai also put down parcha yad-dasht and that the money was given to the Defendants as a loan and not as a deposit.

21. DW 1 Babu Ram Vijai deposed in support of the Defendants version. His evidence is to the effect that when the Plaintiff came to deposit Rs. 14,000/- he was told that the Defendants' firm accepted the deposit of white money only and that the Plaintiff was called upon to furnish proof of the money being white money, that the Plaintiff failed to furnish the proof and that on 29-9-70 a sum of Rs. 15,000/- was returned to the Plaintiff.

22. The Plaintiff was employed as a lecturer in a Degree College. He was not carrying on any business of profit. There could be little possibility of a lecturer having black money as well. There could be no means whereby the Defendants could know if the money deposited by the Plaintiff was black money or white

money. If the money had been accepted as a deposit and the Plaintiff has been called upon to furnish proof of the money being white money there could be no occasion for accepting a further deposit of Rs. 1,000/- on 17-9-70 while no proof had been furnished in respect of the sum of Rs. 14000/- said to have been deposited on 8-9-70.

23. In paragraph 1 of the written statement it is admitted that the Plaintiff sent a notice by registered post. It has not been said that the Defendants sent any reply to the notice. No copy of the reply notice has been filed. In paragraph 7 of the written statement it was said that no interest was agreed between the parties. If the Defendants were accepting deposits of white money, this could be only on payment of interest to the depositor. No depositor would deposit his money without the prospect of earning interest. The Defendants' version regarding the deposit of white money only is a fiction of their own mind and appears to be wholly concocted and false. The Defendants had not the courage to examine Defendant No. 2 Om Prakash Vijai who gave the parcha yad-dasht (Paper No. 75 Kha) to the Plaintiff. In his place, his father Defendant No. 3 Babu Ram Vijai has come forward.

24. The learned Counsel for the Respondent submitted that the learned Civil Judge has disbelieved the Plaintiff's version and has accepted the Defendants version regarding deposit and there is no sufficient reason for this Court to differ.

25. We have carefully considered the submissions made before us. The finding of the learned Civil Judge is based on an erroneous exclusion of material evidence (Paper No. 75 Kha). He has further placed reliance on the entries in the account books of the Defendants which have not been proved in accordance with law. He has drawn adverse inference against the Plaintiff on account of the non-execution of a pronote of bond and has not taken into account the circumstance that Defendant No. 3 Babu Ram Vijai is the Vice President of the Managing Committee of a College in which the Plaintiff is a lecturer. It was enough that the Plaintiff obtained a parcha yad-dasht from Om Prakash Vijai, the son of Babu Ram Vijai. The finding of the learned Civil Judge is based on a misappraisal of the evidence on the record. We hold the Plaintiff's version regarding the loan having been duly proved and we decide the point in favour of the Appellant.

26. The 4th point urged by the learned Counsel for the Appellant is that the learned Civil Judge erred in accepting the Defendants' version regarding the return of Rs. 15,000/- to the Plaintiff.

27. DW 1 Babu Ram Vijai has deposed regarding the return of Rs. 15,000/- to the Plaintiff whereas PW 1 Ram Prasad Gupta has denied the same. The learned Civil Judge recorded the finding in favour of the Defendants on the basis of the entries in the account books which have not been proved in accordance with law. There is no explanation as to why the Plaintiff was permitted to retain parcha yad-dasht even after return of the money. There is also no explanation as to why no reply was sent to a notice sent by the Plaintiff before the filing of the suit. In

these circumstances the Defendants' version regarding payment is wholly unworthy of reliance and the learned Civil Judge erred in accepting the same. We hold that the Defendants have miserably failed to prove the return of Rs. 15,000/- to the Plaintiff.

28. The 5th point urged by the learned Counsel for the Appellant is that the learned Civil Judge erred in holding that the suit is barred by Section 26(4) of U.P. Act No. 29 of 1976.

29. This finding of the learned Civil Judge is indeed remarkable. The Plaintiff alleges payment of a sum of Rs. 15,000/- to the Defendants. The Defendants admit the payment in paragraph 3 of the written statement. The Plaintiff showed the name of Defendant No. 1 firm in the relevant statement of the loan submitted in compliance with Section 26(4) of U.P. Act No. 29 of 1976. The learned Civil Judge acted on a stray statement made by the Plaintiff during the course of the cross-examination wherein he said that he did not give the money to the firm but gave it to Om Prakash. He ignored the cardinal principle of law that a statement ought to be read as a whole and not piecemeal. In the examination-in-chief the Plaintiff stated that on 8-9-70 Defendants borrowed Rs. 14,000/- from him and agreed to pay interest at the rate of Rs. 1.50 per hundred per mensem, that the Defendants gave to him a writing on the pad of the firm, that the writing was put down by Om Prakash, Defendant No. 2 that Defendant No. 2 was a partner in the firm M/s. Seth Murlidhar Ram Chandra and that he was the son of Babu Ram Vijai. In the statement under Order 10, Rule 2 CPC recorded on 10-5-77 the Plaintiff stated that he had given the name of Defendant No. 1 firm in the statement of loan furnished by him in compliance of Section 26(4) of U.P. Act No. 29 of 1976. The earlier statement was recorded on 6-5-77 and the subsequent statement was recorded later. The parcha yad-dasht was put down by Defendant No. 2 Om Prakash Vijai on the pad of the firm. In view of the pleadings of the parties and the evidence on the record there can be no room for doubt that the Plaintiff paid the money to the Defendant No. 1 firm of which Defendants 2 to 5 are partners. The Plaintiff rightly showed the name of the firm as a borrower in the statement of loan submitted by him. The statement made by him during the course of cross-examination is obviously erroneous and the suit cannot be dismissed on its basis. In a case where there was no controversy that the money was paid by the Plaintiff to the Defendants and the only controversy was as to whether the money was as a loan or by way of deposit, the learned Civil Judge recorded a perverse finding on the basis of the aforesaid erroneous statement made by the Plaintiff under the stress of cross-examination. We are satisfied that the name of Defendant No. 1 was rightly shown in the statement of loan furnished by the Plaintiff in compliance of Section 26(4) of U.P. Act No. 29 of 1976 and the suit is not barred by the said provisions.

30. In view of these findings we hold that the learned Civil Judge erred in dismissing the suit with costs. He ought to have decreed the suit along with pendentelite and future interest and costs.

31. The appeal is allowed with costs. The judgment and decree passed by the learned Civil Judge are set aside. The suit for recovery of Rs. 22,280.50 along with pendente lite and future interest on the principal amount of Rs. 15,000/- at the rate of 6% per annum is decreed against the Defendants with costs.